



Billing Code: 3410-16

**DEPARTMENT OF AGRICULTURE**

**Natural Resources Conservation Service**

**7 CFR Part 633**

**[Docket No. NRCS-2014-0017]**

**RIN 0578-AA16**

**Water Bank Program**

**AGENCY:** Natural Resources Conservation Service, Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) is amending the Water Bank Program (WBP) regulations to clarify that lands owned by Indian Tribes are eligible for enrollment. As a non-controversial change to an existing regulation, NRCS is issuing this amendment as a final rule.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mark Rose, Financial Assistance Programs Division, NRCS, Post Office Box 2890, Washington, D.C. 20113; telephone: (202) 720-1844; email: [Mark.Rose@wdc.usda.gov](mailto:Mark.Rose@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion:** NRCS implements WBP in accordance with 16 U.S.C. 1301 et seq. (the Water Bank Act). The purpose of the program is to conserve water, preserve and improve the condition of migratory waterfowl habitat and other wildlife resources, and secure other wildlife benefits through 10-year land use agreements with landowners and operators in important migratory waterfowl nesting and breeding areas. Unlike other Federal wetland laws, the Water Bank Act defines wetlands in accordance with Department of the Interior Circular 39, “Wetlands of the United States.” WBP agreements encompass inland fresh wetland areas (types 1 through 7) as described in Circular 39, artificially developed inland fresh water areas that meet the description of inland fresh wetland areas (types 1 through 7), and other wetland types designated by the Secretary.

Pursuant to 7 U.S.C. 6962(b)(1), NRCS assumed responsibility for administering WBP and promulgated in September 1997 the current regulations at 7 CFR part 633 for implementation of WBP under NRCS. The current WBP regulation limits enrollment to “privately-owned” wetlands only. However, the term “privately-owned” is not defined in the regulation and such limitation is not required by statute.

Since Tribal lands are a distinct category of land, NRCS is revising its regulations to clarify that “privately-owned” wetlands include lands owned by Indian Tribes, and are therefore eligible for enrollment. NRCS believes that issuance of a final rule without a public comment period is appropriate because this is a non-controversial change to an existing regulation to remove a current impediment to providing assistance to Indian Tribes and their members.

Tribal lands are an important component of the wetland landscape in States where NRCS currently offers enrollment (Minnesota, North Dakota, and South Dakota). Therefore, to ensure

WBP is meeting its program purposes, consistent with statute, NRCS is revising the regulation to identify Tribal lands as eligible for enrollment.

### **Regulatory Certifications**

Executive Order 12866: This document does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

Regulatory Flexibility Act: It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rule-making with respect to the subject matter of this rule.

Paperwork Reduction Act: No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under Office of Management and Budget control number 0578-0013.

Executive Order 13175: NRCS has determined that this action will remove an impediment to providing WBP assistance to Indian Tribes. Given its modest funding, NRCS has determined this regulation will not have a significant direct effect on one or more Indian Tribes, or on either the relationship or distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Therefore, this action is not subject to the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Although the consultation requirements do not apply, the agency has developed an outreach and collaboration plan that it will implement as it develops its conservation program policy, and NRCS will incorporate WBP information where appropriate.

Executive Order 13132: Executive Order 13132 requires agencies to conform to principles of Federalism in the development of its policies and regulations. NRCS has determined that this final rule will conform to Federalism principles. In particular, the final rule will not impose any compliance cost on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995: Pursuant to 2 U.S.C. 1532 (Title II, Sec. 202 of the Unfunded Mandates Reform Act of 1995), NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local or Tribal governments, or anyone in the private sector, and therefore, a statement under 2 U.S.C. 1532 is not required.

Federal Domestic Assistance Program: The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is Water Bank Program 10.062.

### **List of Subjects in 7 CFR Part 633**

Administrative practices and procedures, Contracts, Natural resources, Technical assistance, Wetlands.

Accordingly, 7 CFR part 633 is amended as follows:

#### **PART 633—WATER BANK PROGRAM**

1. The authority citation for part 633 continues to read as follows:

AUTHORITY: 16 U.S.C. 1301–1311.

2. Section 633.2 is amended by revising the definition for “Person” and adding a definition in alphabetical order for “Privately-owned” to read as follows:

§ 633.2 Definitions.

\* \* \* \* \*

*Person* means one or more individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or other legal entities and, whenever applicable, an Indian tribe, a State, a political subdivision of a State, or any agency thereof.

\*\*\*\*\*

*Privately-owned* means owned or operated by a person other than a State, a political subdivision of a State, or any agency thereof.

\* \* \* \* \*

3. Section 633.4 is amended by revising paragraph (d)(2) to read as follows:

§ 633.4 Program requirements.

\*\*\*\*\*

(d) \*\*\*

(2) Lands owned by an agency of the United States other than land held in trust for Indian Tribes;

\*\*\*\*\*

Signed this 29 day of May, 2015 in Washington, D.C.

Jason A. Weller,  
Chief,  
Natural Resources Conservation Service.

[FR Doc. 2015-13992 Filed: 6/8/2015 08:45 am; Publication Date: 6/9/2015]